

(3) Cognizant officials of the Department make final determinations on all audit findings.

(c) *Action on audit exceptions*—(1) *Concurrence or clearance*. The State agency has the opportunity of concurring in the exceptions or submitting additional facts that support clearance of the exceptions.

(2) *Appeal*. Any exceptions that are not disposed of under paragraph (c)(1) of this section are included in a disallowance letter that constitutes the Department's final decision unless the State requests reconsideration by the Appeals Board. (Specific rules are set forth in § 430.42.)

(3) *Adjustment*. If the decision by the Board requires an adjustment of FFP, either upward or downward, a subsequent grant award promptly reflects the amount of increase or decrease.

[53 FR 36571, Sept. 21, 1988, as amended at 56 FR 8846, Mar. 1, 1991]

§ 430.35 Withholding of payment for failure to comply with Federal requirements.

(a) *Basis for withholding*. HCFA withholds payments to the State, in whole or in part, only if, after giving the agency reasonable notice and opportunity for a hearing in accordance with subpart D of this part, the Administrator finds—

(1) That the plan no longer complies with the provisions of section 1902 of the Act; or

(2) That in the administration of the plan there is failure to comply substantially with any of those provisions.

(Hearings under subpart D are generally not called until a reasonable effort has been made to resolve the issues through conferences and discussions. These may be continued even if a date and place have been set for the hearing.)

(b) *Noncompliance of the plan*. A question of noncompliance of a State plan may arise from an unapprovable change in the approved State plan or the failure of the State to change its approved plan to conform to a new Federal requirement for approval of State plans.

(c) *Noncompliance in practice*. A question of noncompliance in practice may arise from the State's failure to actu-

ally comply with a Federal requirement, regardless of whether the plan itself complies with that requirement.

(d) *Notice and implementation of withholding*. If the Administrator makes a finding of noncompliance under paragraph (a) of this section, the following rules apply:

(1) The Administrator notifies the State:

(i) That no further payments will be made to the State (or that payments will be made only for those portions or aspects of the program that are not affected by the noncompliance); and

(ii) That the total or partial withholding will continue until the Administrator is satisfied that the State's plan and practice are, and will continue to be, in compliance with Federal requirements.

(2) HCFA withholds payments, in whole or in part, until the Administrator is satisfied regarding the State's compliance.

§ 430.38 Judicial review.

(a) *Right to judicial review*. Any State dissatisfied with the Administrator's final determination on approvability of plan material (§ 430.18) or compliance with Federal requirements (§ 430.35) has a right to judicial review.

(b) *Petition for review*. (1) The State must file a petition for review with the U.S. Court of Appeals for the circuit in which the State is located, within 60 days after it is notified of the determination.

(2) The clerk of the court will file a copy of the petition with the Administrator and the Administrator will file in the court the record of the proceedings on which the determination was based.

(c) *Court action*. (1) The court is bound by the Administrator's findings of fact if they are supported by substantial evidence.

(2) The court has jurisdiction to affirm the Administrator's decision, to set it aside in whole or in part, or, for good cause, to remand the case for additional evidence.

(d) *Response to remand*. (1) If the court remands the case, the Administrator may make new or modified findings of fact and may modify his or her previous determination.